

(a) Terminate the guardianship and authorize order disposition of the remaining assets as provided by s. 880.04 (2) 54.12 (1). The court, as a part of the disposition, may order ~~a suitable amount paid to the county treasurer under order of the court or reserved in the guardianship to assure the ward a decent burial, a marker and care for the grave. In the case of an insolvent guardianship, the court may order an amount not exceeding \$400 reserved in the guardianship or paid to the county treasurer under order of the court to assure the ward a decent burial~~ the guardian to make appropriate financial arrangements for the burial or other disposition of the remains of the ward.

(b) Continue the guardianship, but waive requirements for a bond for the guardian and waive or require an accounting by the guardian.

(6) DELIVERY OF PROPERTY TO FOREIGN GUARDIAN IN ANOTHER STATE. When property of a nonresident ward is in the possession of or due from a guardian or personal representative appointed in this state, the appointing court may order ~~such~~ the property delivered to the foreign guardian upon filing appointed in the state of the nonresident ward after a verified petition, accompanied by a copy of ~~his or her~~ the nonresident guardian's appointment and bond, authenticated so as to be admissible in evidence, is filed with the court and upon after 10 days' notice is provided to the resident guardian or personal representative. ~~Such~~ The petition shall be denied if granting it ~~shall appear~~ appears to be against the interests of the ward. ~~The~~ Any receipt of obtained from the ~~foreign nonresident~~ guardian for the property so delivered shall be taken and filed with the other papers in the proceeding, and a certified copy thereof of the receipt shall be sent to the court ~~which that~~ appointed such the nonresident guardian.

****NOTE: This provision is s. 880.29, as renumbered and amended. Have I amended it as you wish? Yes

54.66 Final accounts. (1) ~~SETTLEMENT OF ACCOUNTS~~ RENDER FINAL ACCOUNT.

~~Upon termination of~~ If a court terminates a guardianship, or upon resignation, removal or death of a guardian, such ~~resigns, is removed, or dies, the guardian or the guardian's personal representative or special administrator shall forthwith promptly render the guardian's a final account to the court and to the former ward, the successor guardian, or the deceased ward's personal representative as the case may be. Upon approval of the account and filing proper receipts the guardian shall be discharged and the guardian's bond released or special administrator, as appropriate. If the ward dies and the guardian and the deceased ward's personal representative or special administrator are the same person, the deceased ward's personal representative or special administrator shall give notice of the termination and rendering of the final account to all interested persons of the ward's estate.~~

(2) SMALL ESTATES. ~~When the whole estate of a ward or of several wards jointly, under the same guardianship, does not exceed \$1,000 in value, the~~ The guardian shall be required to render of a ward with a small estate, as specified in s. 54.62 (3) (a), need not file a final account only upon the termination of the guardian's guardianship, unless otherwise ordered by the court. The guardian shall instead provide the court with a list of the ward's assets that remain at the time the guardianship terminates, including at the death of the ward.

(3) DISCHARGE. After approving the final account and after the guardian has filed proper receipts, the court shall discharge the guardian and release the guardian's bond.

(4) SUMMARY SETTLEMENT OF SMALL ESTATES. ~~When~~ If a ward dies leaving an estate ~~which~~ that can be settled summarily under s. 867.01, the court may approve such the settlement and distribution by the guardian, under the procedures of s. 867.01 without ~~the necessity of~~ appointing a personal representative.

54.68 Review of conduct of guardian. (1) CONTINUING JURISDICTION OF COURT. The court that appointed the guardian shall have continuing jurisdiction over the guardian.

(2) CAUSE FOR COURT ACTION AGAINST A GUARDIAN. Any of the following, if committed by a guardian with respect to a ward or the ward's income or assets, constitutes cause for a remedy of the court under sub. (4):

(a) Failing to timely file an inventory or account, as required under this chapter, that is accurate and complete.

(b) Committing fraud, waste, or mismanagement.

(c) Abusing or neglecting the ward or knowingly permitting others to do so.

(d) Engaging in self-dealing.

(e) Failing to adequately provide for the personal needs of the ward from the ward's available assets and income, including any available public benefits.

(f) Failing to exercise due diligence and reasonable care in assuring that the ward's personal needs are being met in the least restrictive environment consistent with the ward's needs and incapacities.

(g) Failing to act in the best interests of the ward.

(h) Failing to disclose conviction for a crime that would have prevented appointment of the person as guardian.

(i) Failing to disclose that the guardian is listed under s. 146.40 (4g) (a) 2.

(j) Other than as provided in pars. (a) to (j), failing to perform any duties of a guardian or performing acts prohibited to a guardian as specified in ss. 54.18, 54.19, 54.20, 54.22, 54.25, and 54.62.

(3) PROCEDURE. Upon the filing of a petition for review of the conduct of a guardian, the court shall hold a hearing in not less than 10, nor more than 60, days and shall order that the petitioner provide notice of the hearing be provided to the ward, the guardian, and any other persons as determined by the court. The court may authorize use by the petitioner of any of the methods of discovery specified in ch. 804 in support of the petition to review conduct of the guardian.

****NOTE: This material is inserted as part of Bruce Tammi's suggestions.

(4) REMEDIES OF THE COURT. If petitioned by any party or on the court's own motion and after finding cause as specified in sub. (2), a court may do any of the following:

(a) Order the guardian to file an inventory or other report or account required of the guardian.

(b) Require the guardian to reimburse the ward or, if deceased, the ward's estate for losses incurred as the result of the guardian's breach of a duty to the ward.

(c) Impose a financial penalty on the guardian, including denial of compensation for the guardian.

(d) Remove the guardian.

(e) Enter any other order that may be necessary or appropriate to compel the guardian to act in the best interests of the ward or to otherwise carry out the guardian's duties.

(5) **REMOVAL OF PAID GUARDIAN.** The court may remove a paid guardian if changed circumstances indicate that a previously unavailable volunteer guardian is available to serve and that the change would be in the best interests of the ward.

(6) **FEES AND COSTS IN PROCEEDINGS.** In any proceeding under sub. (2) or (5), all of the following apply:

(a) The court may require the guardian to pay personally any costs of the proceeding, including costs of service and attorney fees.

(b) Notwithstanding a finding of incompetence, a ward who is petitioning the court under sub. (2) may retain an attorney, the selection of whom is subject to court approval, and contract for the payment of fees, regardless of whether or not the guardian consents or whether or not the court finds cause under sub. (2).

54.72 Guardian compensation and reimbursement. A guardian of the person or a guardian of the estate is entitled to compensation and to reimbursement for expenses as follows:

(1) **COMPENSATION.** (a) Subject to the court's approval, as determined under par. (b), a guardian shall receive reasonable compensation for the guardian's services.

(b) The court shall use all of the following factors in deciding whether compensation for a guardian is just and reasonable:

1. The reasonableness of the services rendered.
2. The fair market value of the services rendered.
3. Any conflict of interest of the guardian.
4. The availability of another to provide the services.
5. The value and nature of the ward's assets and income, including the sources of the ward's income.
6. Whether the ward's basic needs are being met.

7. The hourly or other rate proposed by the guardian for the services.

(c) The amount of the compensation may be determined on an hourly basis, as a monthly stipend, or on any other basis that the court determines is reasonable under the circumstances. The court may establish the amount or basis for computing the guardian's compensation at the time of the guardian's initial appointment.

(2) REIMBURSEMENT OF EXPENSES. The guardian shall be reimbursed for the amount of the guardian's reasonable expenses incurred in the execution of the guardian's duties, including necessary compensation paid to an attorney, an accountant, a broker, and other agents or service providers.

(3) WHEN COURT APPROVAL REQUIRED. A court must approve compensation and reimbursement of expenses before payment to the guardian is made, but court approval need not be obtained before charges are incurred.

54.74 Compensation of guardian ad litem. ~~On order of the court, the guardian ad litem appointed under this chapter shall be allowed reasonable compensation to be paid by the county of venue, unless~~ Unless the court otherwise directs or unless the guardian ad litem is appointed for a minor, in which case the compensation of the guardian ad litem shall be paid by the minor's parents or the county of venue as provided in s. 48.235 (8), the court shall order reasonable compensation to be paid to a guardian ad litem appointed under s. 54.40 (1) from the ward's income or assets, if sufficient, or, if insufficient, by the county of venue. If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to a private attorneys attorney under s. 977.08 (4m) (b). The guardian ad litem shall receive compensation for performing all duties required under s. 54.40 (4) and for any other acts that are approved by the court and are reasonably necessary to promote the ward's best interests.

54.75 Access to court records. All court records pertinent to the finding of incompetency are closed but subject to access as provided in s. ~~55.06 (17)~~ 51.30 (5). The fact that a person has been found incompetent is accessible to any person who demonstrates to the custodian of the records a need for that information.


****NOTE: This provision is s. 880.33 (6), as renumbered and amended. ↗

SUBCHAPTER VI
VOLUNTARY PROCEEDINGS;
CONSERVATORS

54.76 Conservator; appointment; duties and powers; termination. (1)
Any adult resident who is unwilling or believes that he or she is unable properly to manage his or her property assets or income may voluntarily apply to the circuit court of the county of his or her residence for appointment of a conservator of the estate. Upon receipt of the application, the court shall fix a time and place for hearing the application and may direct to whom, including presumptive adult heirs, and in what manner notice of the hearing shall be given. ~~(7) If an application for conservatorship is filed, the~~ to a potential recipient of the notice, unless the potential recipient has waived receipt. The fee prescribed in s. 814.66 (1) (b) shall be paid at the time of the filing of the inventory or other documents setting forth the value of the estate assets and income.

NO —————
****NOTE: Should anyone in addition to presumptive heirs be specified in s. 54.76 (1)? (See distribution of notice under s. 54.76 (4).) Should any of this be in s. 54.38? Note that I did not draft "adult" — shouldn't all heirs receive notice (see, for example, s. 54.76 (4))?
NO

(2) At the ~~time of such hearing for appointment of a conservator,~~ the applicant shall be personally examined by the court and if the court is satisfied that the applicant desires a conservator and that the fiduciary nominated ~~is~~ and any proposed standby conservator are suitable, the court may appoint the nominee

 nominees as conservator and, if applicable, designate the proposed standby conservator as standby conservator and issue letters of conservatorship to the nominee upon the filing of a bond in the amount fixed by the court.

****NOTE: Note the addition of "standby conservator" to this provision.

(3) A conservator ~~shall have~~ has all the powers and duties of a guardian of the property of an incompetent person. ~~The conservator's powers shall cease upon being removed by the court or upon death of the person whose estate is being conserved~~ estate. An individual whose income and assets ^{are} under conservatorship may make gifts of his or her income and assets, subject to approval of the conservator.

54.76 (3m) A person may at any time bring a petition for the appointment of a standby conservator for an individual for whom a conservator has been appointed under sub. (2).

****NOTE: This provision mirrors s. 54.52 (1).

****NOTE: Do you want a further provision that would correspond to s. 54.15 (6)? NO

54.76 (3n) At any hearing conducted under this section the court may designate one or more standby conservators for an individual for whom a conservator has been appointed under sub. (2) whose appointment shall become effective immediately upon the death, unwillingness, unavailability, or inability to act, resignation, or court's removal of the initially appointed conservator or during a period, as determined by the initially appointed conservator or the court, when the initially appointed conservator is temporarily unable to fulfill his or her duties, including during an extended vacation or illness. The powers and duties of the standby conservator shall be the same as those of the initially appointed conservator. The standby conservator shall receive a copy of the court order establishing or modifying the initial conservatorship, and the order designating the standby

conservator. Upon assuming office, the standby conservator shall so notify the court. Upon notification, the court shall designate this conservator as permanent or shall specify the time period for a limited standby conservatorship.

****NOTE: This provision corresponds to s. 54.52 (2). OK

(4) Any person, including an individual whose estate income and assets is under conservatorship, may apply to the court at any time for termination ~~thereof~~ of the conservatorship. Upon ~~such receipt of the~~ application, the court shall fix a time and place for hearing and may direct that 10 days' notice by mail be given to the ~~person's individual's~~ guardian of the person or agent under a power of attorney for healthcare, if any, the conservator, any standby conservator, and the presumptive adult heirs of the ~~applicant~~. Upon such individual whose income and assets are under conservatorship. A potential recipient of the notice may waive its receipt. At the hearing, the court shall, unless it is clearly shown that the applicant individual whose income and assets are under conservatorship is incompetent, remove the conservator and order the property income and assets restored to the applicant, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator individual. If, however, the court shall upon such hearing determine determines at the hearing that the person individual whose estate is income and assets are administered by a conservator may be is incapable of handling his or her estate income and assets, the court shall order the conservatorship continued, or, if the applicant so desires and the a nominee is suitable, the court may appoint a successor conservator. A conservatorship may only be terminated under a hearing under this subsection.

(5) Appointment of a conservator ~~shall not be~~ does not constitute evidence of the competency or incompetency of the person individual whose ~~estate is~~ income and assets are being administered.

(6) The court that appointed the conservator shall have continuing jurisdiction over the conservator. Any of the following, if committed by a conservator with respect to a conservatee or the conservatee's assets or income, constitutes cause for a remedy of the conservator under sub. (7) (a) 5.:

(a) Failing to timely file an inventory or account, as required under this chapter, that is accurate and complete.

(b) Committing fraud, waste, or mismanagement.

(c) Abusing or neglecting the conservatee or knowingly permitting others to do so.

(d) Engaging in self-dealing.

(e) Failing to adequately provide for the personal needs of the conservatee from the available assets and income, including any available public benefits.

(f) Failing to act in the best interests of the conservatee.

(g) Failing to disclose conviction for a crime that would have prevented appointment of the person as conservator.

(h) Failing to disclose that the conservator is listed under s. 146.40 (4g) (a) 2.

(7) (a) The powers of a conservator may not be terminated without a hearing and may not be terminated unless any of the following occur:

1. The court removes the conservator on the court's own motion or under sub. (4).

2. The court appoints a guardian for the individual whose assets and income are conserved.

X

3. The individual whose assets and income are conserved dies.

4. The conservator or individual whose assets and income are conserved changes residence to another state.

5. The court finds cause, as specified in sub. (6), for removal of the conservator.

(b) If anyone objects to termination of the conservatorship and alleges that the individual whose assets and income are conserved is appropriate for appointment of a guardian, the court may stay the hearing under par. (a) for 14 days to permit any interested person to file a petition for guardianship. If no petition is filed, the court may terminate the conservatorship and may appoint a guardian ad litem for the individual.

(8) If a court terminates a conservatorship or a conservator resigns, is removed, or dies, the conservator or the conservator's personal representative or special administrator shall promptly render a final account to the court and to the former conservatee, any guardian of the former conservatee, or any deceased conservatee's personal representative or special administrator, as appropriate. If the conservator dies and the conservator and the deceased conservatee's personal representative or special administrator are the same person, the deceased conservatee's personal representative or special administrator shall give notice of the termination and rendering of the final account to all interested persons of the conservatee's estate.

54.76 (9) (a) If a conservator resigns, is removed, or dies, the court, on its own motion or upon petition of any interested person, may appoint a competent and suitable person as successor conservator. The court may, upon request of any interested person or on its own motion, direct that a petition for appointment of a successor conservator be heard in the same manner and subject to the same

requirements as provided under this section for an original appointment of a conservator.

(b) If the appointment under par. (a) is made without hearing, the successor conservator shall provide notice to the individual for whom a conservator has been appointed and all interested persons of the appointment, the right to counsel, and the right to petition for reconsideration of the successor conservator. The notice shall be served personally or by mail not later than 10 days after the appointment.

****NOTE: These paragraphs are modeled after s. 54.54 (1) and (2). Are they, especially par. (b), suitable for a conservatorship?

Five
yes

SUBCHAPTER VII

UNIFORM GUARDIANSHIP ACTS

SECTION 1. 54.850 of the statutes is created to read:

54.850 Definitions. In this subchapter:

(1) "Administration" means any proceeding relating to a decedent's estate whether testate or intestate.

****NOTE: This definition is the same as s. 851.01, stats.

(2) "Beneficiary" means any person nominated in a will to receive an interest in property other than in a fiduciary capacity.

****NOTE: This definition is the same as s. 851.03, stats.

(3) "Distributee" means any person to whom property of a decedent is distributed other than in payment of a claim, or who is entitled to property of a decedent under the decedent's will or under the statutes of intestate succession.

****NOTE: This definition is the same as s. 851.07, stats.

(4) "Person interested" has the meaning given in s. 851.21.

55.01 (1v) "Degenerative brain disorder" means the loss or dysfunction of brain cells to the extent that the individual is substantially impaired in his or her ability to provide adequately for his or her own care or custody. — & Financial mgt - as (b) on A.6

(6t) "Psychotropic medication" means a prescription drug, as defined in s. 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging behavior.

(6v) "Serious and persistent mental illness" means a mental illness that is severe in degree and persistent in duration, that causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, that may lead to an inability to maintain stable adjustment and independent functioning without long-term treatment and support, and that may be of lifelong duration. "Serious and persistent mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

55.05 (2) (d) The court may order protective services for an individual for whom a determination of incompetency is made under s. 880.33 54.10 (3) if the individual entitled to the protective services will otherwise incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to others. The court may order the involuntary administration of psychotropic medication as a protective service ~~under this paragraph only if a determination of incompetency is made for the individual under s. 880.33 (4m).~~ The court may authorize a guardian ~~to consent to forcible administration of psychotropic medication for an individual only if the court has made a finding under s. 880.33 (4r) (b) that the individual has~~

X

~~substantially failed to comply with the administration of psychotropic medication under the individual's treatment plan only under the requirements of s. 55.14.~~

Strike
this

Sally
note
this
inconst

55.06 (6) ~~Section 880.33 (2) applies~~ Sections 54.42, 54.44, and 54.46 apply to all hearings under this chapter except for transfers of placement under sub. (9) (b), ^{and} (c) and (e). A person to be protected shall have a guardian ad litem who is an attorney appointed in accordance with s. 757.48 (1) present at all hearings under this chapter if the person does not have full legal counsel. The court may, however, excuse a personal appearance by a guardian ad litem based on information contained in a written report by the guardian ad litem to the court. If the person is an adult who is indigent, the county of legal settlement shall be liable for guardian ad litem fees. If the person is a child, the person's parents or the county of legal settlement shall be liable for guardian ad litem fees as provided in s. 48.235 (8). The subject individual, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including any person making an evaluation or review under sub. (8) (c).

****NOTE: I am very unsure if the cross-reference change in the first sentence is appropriate; please review.

I don't
think so.
A Gship with
a mot. parent
would have to
follow this.

****NOTE: The Leg. Council bill contains the creation of s. 55.11 (concerning a comprehensive evaluation, recommendations, statements) Do I put this in? Where do I stop on adding material from that draft?

Don't know. This is same @ as earlier (months ago) of do we wait on ch. 55 or put in 54 now in case 55 never passes, etc
55.14 Involuntary administration of psychotropic medication. (1) In

this section:

(a) "Involuntary administration of psychotropic medication" means any of the following:

1. Placing psychotropic medication in an individual's food or drink with knowledge that the individual protests receipt of the psychotropic medication.

2. Forcibly restraining an individual to enable administration of psychotropic medication.

3. Requiring an individual to take psychotropic medication as a condition of receiving privileges or benefits.

(b) "Not competent to refuse psychotropic medication" means that, ~~because of chronic mental illness, as defined in s. 51.01 (3g)~~ as a result of developmental disabilities, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to an individual, one of the following is true:

1. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives to accepting treatment.

2. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her ~~chronic mental illness condition~~ in order to make an informed choice as to whether to accept or refuse psychotropic medication.

(c) "Protest" means make more than one discernible negative response, other than mere silence, to the offer of, recommendation for, or other proffering of voluntary receipt of psychotropic medication. "Protest" does not mean a discernible negative response to a proposed method of administration of the psychotropic medication.

(d) "Psychotropic medication" means a prescription drug, as defined in s. 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging behavior.

(2) Involuntary administration of psychotropic medication, with consent of a guardian, may be ordered as a protective service only under the requirements of this section.

(3) In addition to the other requirements of this chapter pertaining to petitions for protective services, a petition under this section shall allege that all of the following are true:

(a) A physician has prescribed psychotropic medication for the individual.

(b) The individual is not competent to refuse psychotropic medication.

(c) The individual has refused to take the psychotropic medication voluntarily or attempting to administer psychotropic medication to the individual voluntarily is not feasible or is not in the best interests of the individual. If the petition alleges that the individual has refused to take psychotropic medication voluntarily, the petition shall identify, if known, the reasons the individual refuses to take psychotropic medication voluntarily. The petition also shall provide evidence showing that a reasonable number of documented attempts to administer psychotropic medication voluntarily using appropriate interventions that could reasonably be expected to increase the individual's willingness to take psychotropic medication voluntarily have been made and have been unsuccessful. If the petition alleges that attempting to administer psychotropic medications to the individual voluntarily is not feasible or is not in the best interests of the individual, the petition must identify specific reasons supporting that allegation.

****NOTE: I have added "if known" to the second sentence, to deal with the situation in which the individual's reasons for refusal cannot be ascertained.

OK

(d) The individual's condition for which psychotropic medication has been prescribed is likely to be improved by administration of psychotropic medication and the individual is likely to respond positively to psychotropic medication.

(e) Unless psychotropic medication is administered involuntarily, the individual will incur an immediate or imminent substantial probability of physical harm, impairment, injury, or debilitation or will present a substantial probability of physical harm to others. The substantial probability of physical harm, impairment, injury, or debilitation shall be evidenced by one of the following:

1. The individual's history of at least 2 episodes, one of which has occurred within the previous 24 months, that indicate a pattern of overt activity, attempts, threats to act, or omissions that resulted from the individual's failure to participate in treatment, including psychotropic medication, and that resulted in a finding of probable cause for commitment under s. 51.20 (7), a settlement agreement approved by a court under s. 51.20 (8) (b), or commitment ordered under s. 51.20 (13).

2. Evidence that the individual meets one of the dangerousness criteria set forth in s. 51.20 (1) (a) 2. a. to e.

(4) A petition under this section must include a written statement signed by a physician who has personal knowledge of the individual that provides general clinical information regarding the appropriate use of psychotropic medication for the individual's condition and specific data that indicates that the individual's current condition necessitates the use of psychotropic medication.

(5) The guardian ad litem appointed under s. 55.06 (6) for an individual who is the subject of a petition under this section shall report to the court whether the allegations in the petition required under sub. (3) are true, and whether involuntary administration of psychotropic medication is in the best interests of the individual.

****NOTE: WLC: 0220/1 rennumbers s. 55.06 (6) to be s. 55.10 (4) (b) and makes various changes, which are not incorporated in this draft. Please review s. 55.06 (6) to ensure that, as current law, it is satisfactory as a cross-reference under this subsection.

(6) If requested by an individual who is the subject of a petition under this section or anyone on his or her behalf, the individual has the right at his or her own expense, or if indigent at the expense of the county in which the petition is filed, to secure an independent medical or psychological examination relevant to the issue of whether the allegations in the petition required under sub. (3) are true and whether involuntary administration of psychotropic medication is in the best interest of the individual, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

(7) Upon the filing of a petition under this section, the court shall appoint counsel. A petition under this section shall be heard under s. 55.06 within 30 days after it is filed.

****NOTE: Short of creating the general hearings section that is contained in the Leg. Council draft under s. 55.10, I have made reference to s. 55.06 under this subsection. Please review.

Yes

(8) The court may issue an order authorizing an individual's guardian to consent to involuntary administration of psychotropic medication to the individual and may order involuntary administration of psychotropic medication to the individual as a protective service, with the guardian's consent if the court or jury finds by clear and convincing evidence that the allegations in the petition required under sub. (3) are true, all other requirements for involuntary administration of psychotropic medication under this section have been met, psychotropic medication is necessary for treating the condition described in the statement under sub. (4), and all other requirements of this chapter for ordering protective services have been met. An order under this section shall do all of the following:

(a) Direct the development of a treatment plan for the individual specifying the protective services, including psychotropic medication as ordered by the treating physician, that the individual should receive. If the individual resides in a nursing home or hospital, the nursing home or hospital shall develop the treatment plan. If the individual resides elsewhere, the county department or an agency with which it contracts shall develop the treatment plan. The treatment plan shall include a plan for the involuntary administration of psychotropic medication to the individual. The treatment plan is subject to the approval of the guardian and to review and approval by the court. If the court approves the plan, the court shall order the county department or an agency with which it contracts to ensure that psychotropic medication is administered in accordance with the treatment plan.

(b) Order the individual to comply with the treatment plan under par. (a). The order shall provide that if the individual fails to comply with provisions of the treatment plan that require the individual to take psychotropic medications, the medications may be administered involuntarily with consent of the guardian. The order shall specify the methods of involuntary administration of psychotropic medication to which the guardian may consent. An order authorizing the forcible restraint of an individual shall specify that a person licensed under s. 441.06, 441.10, or 448.05 (2) or (5) shall be present at all times that psychotropic medication is administered in this manner and shall require the person or facility using forcible restraint to maintain records stating the date of each administration, the medication administered, and the method of forcible restraint utilized.

(9) If an individual who is subject to an order under this section is not in compliance with the order because he or she refuses to take psychotropic medication as ordered under the treatment plan, and it is necessary for the individual to be

transported to an appropriate facility for forcible restraint for administration of psychotropic medication, the corporation counsel shall file with the court a statement of the facts which constitute basis for the noncompliance of the individual. The statement shall be sworn to be true and shall be based upon the information and belief of the person filing the statement. The statement shall be signed by the individual's guardian and by the director or designee of the county department or an agency with which it contracts to develop and administer the treatment plan. Upon receipt of the statement of noncompliance, if the court finds by clear and convincing evidence that the individual has substantially failed to comply with the administration of psychotropic medication as ordered under the treatment plan, the court may issue an order authorizing the sheriff or any other law enforcement agency in the county in which the individual is found or in which it is believed that the individual may be present to take the individual into custody and transport him or her to an appropriate facility for administration of psychotropic medication using forcible restraint, with consent of the guardian.

(10) Nothing in this section prohibits the involuntary administration of psychotropic medication as an emergency protective service under this chapter.

(11) The county department or an agency with which it contracts shall provide to the department a copy of any order issued under this section that applies to any protectively placed individual in the county.

(12) The department shall annually submit to the legislature under s. 13.172 (2) a report regarding orders under this section.

(13) An order under this section is subject to annual review under s. 55.19.

55.19 Annual review of order authorizing involuntary administration of psychotropic medication. In addition to or in conjunction with the annual

review required under s. 55.06 (10), all of the following shall be performed with respect to any individual who is subject to an order under s. 55.14 or an order initially issued under s. 880.33 (4r), 2003 stats., authorizing involuntary administration of psychotropic medication:

****NOTE: Because s. 55.06 (10), stats., is otherwise unaffected by this draft, it is necessary to distinguish between the review under this section and the Watts review under s. 55.06 (10). Please review my opening language for this provision.

(1) COUNTY DEPARTMENT PERFORMANCE OF REVIEW. (a) The county department of the individual's county of residence shall, except as provided in sub. (1m), review, in compliance with the requirements of this section, the status of each individual who is the subject of the order. The review shall include a visit to the individual and a written evaluation of the physical, mental, and social condition of the individual that is relevant to the issue of the continued need for the order. The review shall be made a part of the permanent record of the individual. The county department shall inform the guardian of the individual of the review at the time the review is made and shall invite the individual and the guardian to submit comments or information concerning the individual's need for involuntary administration of psychotropic medication or other protective services before completing a report of the review. Not later than the first day of the 11th month after the initial order is made for an individual, except as provided in par. (b), and at least annually thereafter, the county department shall do all of the following:

1. File a report of the review with the court that issued the order.
2. File with the court under subd. 1. a petition for annual review by the court of the order.
3. Provide the report under subd. 1. to the individual and the guardian of the individual.

X

(b) If, in an annual review of an individual's status under par. (a), the individual or the individual's guardian or guardian ad litem requests termination of the order and a full due process hearing is provided, or if a full due process hearing is provided under a petition for modification or termination of the order, the county department is not required to initiate a subsequent review under par. (a) until the first day of the 11th month after the date that the court issues a final order after the full due process hearing.

(bm) If the individual is subject to a protective placement order, the review under par. (a) shall be conducted simultaneously with any review of the individual's protective placement.

(c) The review under par. (a) may not be conducted by a person who is an employee of a facility in which the individual resides or from which the individual receives services. The report of the review shall include information on all of the following:

1. Whether the individual continues to meet the standards for protective services.
2. Whether the individual is not competent to refuse psychotropic medication, as defined in s. 55.14 (1) (b).
3. Whether the individual continues to refuse to take psychotropic medication voluntarily or attempting to administer psychotropic medication to the individual voluntarily is not feasible or is not in the best interests of the individual, as specified in s. 55.14 (3) (c).

****NOTE: I'm not sure that I understand what this subdivision is requiring; s. 55.14 (3) (c) specifies requirements for a petition for a court order requiring that psychotropic medication be administered involuntarily to an individual. Is it your intent that this subdivision require that the report of the annual review provide all of the evidence that

yes ✓

the petition is required to provide? Note that I also added "is not feasible," since s. 55.14 (3) (c) has that option.

Yes I think so, but will double-check with Dianne Greenleaf.

4. Whether the individual's condition for which psychotropic medication has been prescribed has been improved by psychotropic medication and the individual has responded positively to psychotropic medication.

5. If the petitioner alleged under s. 55.14 (3) (e) 2. that the individual meet one of the dangerousness criteria set forth in ss. 51.20 (1) (a) 2. a. to e., whether the individual continues to meet the criterion.

6. The comments of the individual and the individual's guardian during the performance of the review, as summarized by the county department, and the response of the county department to the comments.

7. The comments, if any, of a staff member at the facility at which the individual is placed or receives services or at which psychotropic medication is administered to the individual that are relevant to the review of the continued need for the order.

(1m) COUNTY AGREEMENT. The county of residence of an individual who is subject to an order under s. 55.14 and is protectively placed in a different county may enter into an agreement with that county under which the county of the individual's placement performs all or part of the duties of the county of residence under this section.

(2) GUARDIAN AD LITEM APPOINTMENT AND REPORT. After a county department has filed a report with a court under sub. (1) (a) 1., the court shall appoint a guardian ad litem in accordance with s. 757.48 (1). The guardian ad litem shall do all of the following:

(a) Review the report filed under sub. (1) (a) 1. and any other relevant reports on the individual's condition and continued need for the order under s. 55.14.

(b) Meet with the individual and contact the individual's guardian and explain to the individual and guardian all of the following:

****NOTE: Should sub. (2) (b) (intro.) indicate that the explanation must be oral (because par. (c) additionally requires that the information be provided in writing)?

Yes

1. The procedure for review of an order for involuntary administration of psychotropic medication.

2. The right of the individual to appointment of legal counsel under sub. (3) (c).

3. The right to an evaluation under sub. (3) (b).

****NOTE: This isn't actually a right, is it? Subsection (3) (b) 1. seems to leave it within the discretion of the court. Should this instead say, "That the court may under sub. (3) (b) 1. order performance of an evaluation."?

D.G. yes

I'll ask Name - perhaps we meant independent

4. The contents of the report under sub. (1) (a) 1.

5. That a termination of the order for involuntary administration of psychotropic medication may be ordered by the court.

eval?

6. The right to a full due process hearing under sub. (3) (d).

(c) Provide the information required under par. (b) to the individual in writing.

(d) Review the individual's condition and rights with the individual's guardian.

(e) Ascertain whether the individual wishes to exercise any of his or her rights under sub. (3) (b), (c), or (d).

****NOTE: Please see the ****Note under sub. (2) (b) 3.

OK - depends on what Dianne suggests

(f) Within 30 days after appointment, file with the court a written report based on information obtained under this subsection and any other evaluations or records of the individual. The report shall discuss whether the individual appears to continue to meet the standards for an order under s. 55.14. The report shall also state whether any of the following apply:

1. An evaluation under sub. (3) (b) is requested by the guardian ad litem, the individual, or the individual's guardian.

2. The individual or the individual's guardian requests termination of the order under s. 55.14.

3. The individual or the individual's guardian requests or the guardian ad litem recommends that legal counsel be appointed for the individual.

4. The individual or his or her guardian or guardian ad litem requests a full due process hearing under this section for the individual.

(g) Certify to the court that he or she has complied with the requirements of pars. (b), (c), and (d).

(3) COURT REVIEW OF REPORTS; HEARING; ORDER. (a) The court that issued the order under s. 55.14 shall review the report of the guardian ad litem under sub. (2) (f) and the report filed under sub. (1) (a) 1.

(b) The court shall order performance, by a person who is not an employee of the county department, of an evaluation of the physical, mental, and social condition of the individual that is relevant to the issue of the continued need for the order under s. 55.14 that is independent of the review performed under sub. (1) (a) if any of the following apply:

1. The report required under sub. (1) (a) 1. is not timely filed, or the court determines that the report fails to meet the requirements of sub. (1) (c).

2. Following review of the guardian ad litem's report under sub. (2) (f), the court determines that an independent evaluation for the individual is necessary.

3. The individual or the individual's guardian or guardian ad litem so requests.

(bm) If an evaluation is ordered under par. (b), it shall be performed at the expense of the individual or, if the individual is indigent, at the expense of the county of residence under sub. (1) (a).

✓

(br) The court shall order that the county department obtain any other necessary information with respect to the individual.

(c) The court shall order legal counsel for an individual and, if the individual appears to be indigent, refer him or her to the authority for indigency determinations under s. 977.07 (1) if any of the following apply:

1. Following review of the guardian ad litem's report under sub. (2) (f), the court determines that legal counsel for the individual is necessary.

2. The individual or the individual's guardian or guardian ad litem so requests.

(d) The court shall order either a summary hearing or a full due process hearing. A summary hearing may be held in court or may be held by other means including by telephone or video conference. The court shall hold a full due process hearing if any of the following apply:

1. The individual or the individual's guardian or guardian ad litem so requests.

2. The report under sub. (2) (f) indicates that the individual no longer meets the standards for an order under s. 55.14 (8).

3. The report under sub. (2) (f) indicates that the individual objects to the order.

(e) Following the hearing under par. (d), the court shall do one of the following:

1. If the court finds that the individual continues to meet the standards for an order under s. 55.14 (8), the court shall order the continuation of the order. The court shall include in the order? OR IN ITS DECISIONS? the information relied upon as a basis for the order and shall make findings based on the requirements for allegations of a petition under s. 55.14 (3) in support of the need for continuation of the order.

****NOTE: In the second sentence under this subdivision, did you mean that the court order shall include the information relied upon as a basis? Or that the court should include this information in some other document?

Good question - will ask Doune

2. If the court finds that the individual continues to meet the standards for an order under s. 55.14 (8) but that modification of the order or the treatment plan would be in the best interests of the individual, the court shall modify the order, order modifications to the individual's treatment plan, or both. Any modifications to the treatment plan are subject to the approval of the guardian. The court shall include the information relied upon as a basis for its order and shall make findings based on the requirements for allegations of a petition under s. 55.14 (3) in support of the need for authorizing the guardian to consent to involuntary administration of psychotropic medication.

D'anne
Same
Q
see
1/10/05
e-mail

****NOTE: With respect to the third sentence, please see the ****Note under subd.

1.

3. If the court finds that the individual no longer meets the standards for an order under s. 55.14 (8), the court shall terminate the order. If the order is terminated, the court shall review the needs of the individual with respect to other protective services. If the court determines that the individual meets the standards for other protective services under this chapter that are not currently being provided to the individual, the court may order those protective services for the individual.

(f) The court shall provide a copy of the order made under par. (e) to all of the following:

1. The individual.
2. The individual's guardian, guardian ad litem, and legal counsel, if any.
3. The facility in which the individual resided, if any, when the petition for annual review was filed.
4. The county department under sub. (1) (a) and, if relevant, sub. (1m).

55.195 Duties in of guardian ad litem for reviews. (intro.) In any review of a protective placement under s. 55.06 or of a protective ~~service~~ services order under s. 55.05, except as provided in s. 55.19 (2), the guardian ad litem shall do all of the following:

(1) Interview the ward to explain the review procedure, the right to an independent evaluation, the right to counsel, and the right to a hearing.

(2) Provide the information under ~~par. (a)~~ sub. (1) to the ward in writing.

(3) Secure Request that the court order an additional medical, psychological, or other evaluation of the ward, if necessary.

(4) Review the annual report and relevant reports on the ward's condition and placement.

(5) Review the ward's condition, placement, and rights with the guardian.

(6) If relevant, report to the court that the ward objects to the finding of continuing incompetency, the present or proposed placement, the position of the guardian, or the recommendation of the guardian ad litem as to the best interests of the ward or if there is ambiguity about the ward's position on these matters.

(7) Provide a summary written report to the court.

(8) If relevant, report to the court that the ward requests the appointment of counsel or an adversary hearing.

(9) Attend the hearing.

****NOTE: This is s. 880.331 (5), as amended and renumbered and with 55.195 (7) and (9) created.

346.06 (1) (L) To any person who has been declared incompetent under s. 54.25

(2) (c) 1. d. to apply for an operator's license.

343.31 (title) Revocation or suspension of licenses after certain convictions or declarations.

343.31 (2x) The department shall suspend a person's operating privilege upon receiving a record of a declaration under s. 54.25 (2) (c) 1. d. that the person is incompetent to apply for an operator's license. The department may reinstate the person's operator's license upon receiving a record of a declaration that the person is no longer incompetent to apply for an operator's license under s. 54.25 (2) (c) 1. d., if the person is otherwise qualified under this chapter to obtain an operator's license.

343.31 (3) (a) Except as otherwise provided in this subsection or sub. (2m) or (2x), all revocations or suspensions under this section shall be for a period of one year.

440.121 Credential denial, nonrenewal and revocation based on incompetency. (1) Notwithstanding any other provision of chs. 440 to 480 relating to issuance of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential issued to an individual for whom the department receives a record of a declaration under s. 54.25 (2) (c) 1. d. stating that the individual is incompetent to apply for a credential under chs. 440 to 480.

609.65 (1) (intro.) If an enrollee of a limited service health organization, preferred provider plan, or defined network plan is examined, evaluated, or treated for a nervous or mental disorder pursuant to a court order under s. 880.33 (4m) or (4r), 2003. stats., an emergency detention under s. 51.15, a commitment or a court order under s. 51.20 or 880.33 (4m) or (4r), an order for protective placement or protective services under ch. 55, an order under s. 55.14 or 55.19 (3) (e), or an order under ch. 980 then, notwithstanding the limitations regarding participating providers, primary providers, and referrals under ss. 609.01 (2) to (4) and 609.05 (3),

the limited service health organization, preferred provider plan, or defined network plan shall do all of the following:

757.48 (1) (a) Except as provided in s. 879.23 (4), in all matters in which a guardian ad litem is appointed by the court, the guardian ad litem shall be an attorney admitted to practice in this state. In order to be appointed as a guardian ad litem under s. 767.045, an attorney shall have completed 3 hours of approved continuing legal education relating to the functions and duties of a guardian ad litem under ch. 767. In order to be appointed as a guardian ad litem under s. 54.40 (1), an attorney shall have complied with SRC chapter 36.

814.61 (12) (a) 1. For receiving a trust fund, or handling or depositing money under s. 757.25, or 807.10 (3) ~~or 880.04 (2) (a)~~, at the time the money is deposited with the clerk, a fee of \$10 or 0.5% of the amount deposited, whichever is greater. In addition, a fee of \$10 shall be charged upon each withdrawal of any or all of the money deposited with the clerk.

814.66 (1) (n) For depositing or disbursing money under s. 54.12 (1) (a), a fee of \$10 or 0.5 percent of the amount deposited, whichever is greater at the time the money is deposited with the register in probate, and a fee of \$10 whenever any withdrawal is made of the money deposited with the register in probate.

****NOTE: This language is adapted from s. 814.61 (12) (a) 1.; does it meet your intent?

will ask other ELDER LAW SECTION attorneys

SECTION 2. Subchapter II (title) of chapter 880 [precedes 880.60] of the statutes is repealed.

SECTION 3. 880.60 of the statutes is renumbered 54.852, and 54.852 (1) (d) and (g), (10) (a) and (12), as renumbered, are amended to read:

54.852 (1) (d) “Guardian” Notwithstanding s. 54.01 (9), “guardian” means any fiduciary for the person or estate of a ward.

(g) “Ward” Notwithstanding s. 54.01 (37), “ward” means ~~a beneficiary of an individual who receives benefits from the U.S. department of veterans affairs.~~

(10) (a) Every guardian shall file his or her accounts as required by this chapter and shall be excused from filing accounts in the case as provided by s. ~~880.25 (3)~~ 54.66 (2).

(12) COMPENSATION OF GUARDIANS. Guardians shall be compensated as provided in s. ~~880.24 (1)~~ 54.72.

SECTION 4. Subchapter III (title) of chapter 880 [precedes 880.61] of the statutes is repealed.

SECTION 5. 880.61 of the statutes is renumbered 54.854, and 54.854 (title), (intro.), (3) to (6), (10), (11), (13) and (14), as renumbered, are amended to read:

54.854 Definitions Uniform transfers to minors act: definitions. (intro.)
In ss. ~~880.61 to 880.72~~ 54.854 to 54.898:

(3) “~~Conservator~~” Notwithstanding s. 54.01 (3), “conservator” means a person appointed or qualified by a court to act as general, limited or temporary guardian of a minor’s property or a person legally authorized to perform substantially the same functions.

(4) “~~Court~~” Notwithstanding s. 54.01 (4), “court” means the circuit court.

(5) “Custodial property” means any interest in property transferred to a custodian under ss. ~~880.61 to 880.72~~ 54.854 to 54.898 and the income from and proceeds of that interest in property.

(6) “Custodian” means a person so designated under s. ~~880.65~~ 54.870 or a successor or substitute custodian designated under s. ~~880.695~~ 54.888.

(10) ~~"Minor"~~ Notwithstanding s. 54.01 (19). "minor" means an individual who has not attained the age of 21 years.

(11) ~~"Personal representative"~~ Notwithstanding s. 54.01 (23). "personal representative" means an executor, administrator, successor personal representative or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(13) "Transfer" means a transaction that creates custodial property under s. ~~880.65~~ 54.870.

(14) "Transferor" means a person who makes a transfer under ss. ~~880.61 to 880.72~~ 54.854 to 54.898.

SECTION 6. 880.615 of the statutes is renumbered 54.856, and 54.856 (1) and (2), as renumbered, are amended to read:

54.856 (1) Sections ~~880.61 to 880.72~~ 54.854 to 54.898 apply to a transfer that refers to ss. ~~880.61 to 880.72~~ 54.854 to 54.898 in the designation under s. ~~880.65~~ 54.870 (1) by which the transfer is made if at the time of the transfer the transferor, the minor or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to ss. ~~880.61 to 880.72~~ 54.854 to 54.898 despite a subsequent change in residence of a transferor, the minor or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under s. ~~880.65 to 880.695~~ 54.870 to 54.888 is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

SECTION 7. 880.62 of the statutes is renumbered 54.858, and 54.858 (2) and (3), as renumbered, are amended to read:

54.858 (2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under s. ~~880.65~~ 54.870 (1).

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under s. ~~880.65~~ 54.870. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property under s. ~~880.65~~ 54.870.

SECTION 8. 880.625 of the statutes is renumbered 54.860 and amended to read:

54.860 Transfer by gift or exercise of power of appointment. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor under s. ~~880.65~~ 54.870.

SECTION 9. 880.63 of the statutes is renumbered 54.862 and amended to read:

54.862 Transfer authorized by will or trust. (1) A personal representative or trustee may make an irrevocable transfer under s. ~~880.65~~ 54.870 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under s. ~~880.62~~ 54.858 to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under s. ~~880.62~~ 54.858, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under s. ~~880.65~~ 54.870 (1).

SECTION 10. 880.635 of the statutes is renumbered 54.864, and 54.864 (1) and (2), as renumbered, are amended to read:

54.864 (1) Subject to sub. (3), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor under s. ~~880.65~~ 54.870 in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to sub. (3), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor under s. ~~880.65~~ 54.870.

SECTION 11. 880.64 of the statutes is renumbered 54.866 and amended to read:

54.866 Transfer by obligor. (1) Subject to subs. (2) and (3), a person not subject to s. ~~880.63 or 880.635~~ 54.862 or 54.864 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor under s. ~~880.65~~ 54.870.

(2) If a person having the right to do so under s. ~~880.62~~ 54.858 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under s. ~~880.62~~ 54.858, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds \$10,000 in value.

SECTION 12. 880.645 of the statutes is renumbered 54.868 and amended to read:

54.868 Receipt for custodial property. A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian under ss. ~~880.61 to 880.72~~ 54.854 to 54.898.

SECTION 13. 880.65 of the statutes is renumbered 54.870.

SECTION 14. 880.655 of the statutes is renumbered 54.872 and amended to read:

54.872 Single custodianship. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under ss. ~~880.61 to 880.72~~ 54.854 to 54.898 by the same custodian for the benefit of the same minor constitutes a single custodianship.

SECTION 15. 880.66 of the statutes is renumbered 54.874 and amended to read:

54.874 Validity and effect of transfer. (1) The validity of a transfer made in a manner prescribed in ss. ~~880.61 to 880.72~~ 54.854 to 54.898 is not affected by:

(a) Failure of the transferor to comply with s. ~~880.65~~ 54.870 (3) concerning possession and control;

(b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under s. ~~880.65~~ 54.870 (1); or

(c) Death or incapacity of a person nominated under s. ~~880.62~~ 54.858 or designated under s. ~~880.65~~ 54.870 as custodian or the disclaimer of the office by that person.

(2) A transfer made under s. ~~880.65~~ 54.870 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties and authority provided in ss. ~~880.61 to 880.72~~ 54.854 to 54.898, and neither the minor nor the minor's legal representative has any right, power, duty or authority with respect to the custodial property except as provided in ss. ~~880.61 to 880.72~~ 54.854 to 54.898.

X

(3) By making a transfer, the transferor incorporates in the disposition all of the provisions of ss. ~~880.61 to 880.72~~ 54.854 to 54.898 and grants to the custodian, and to any 3rd person dealing with a person designated as custodian, the respective powers, rights and immunities provided in ss. ~~880.61 to 880.72~~ 54.854 to 54.898.

SECTION 16. 880.665 of the statutes is renumbered 54.876.

SECTION 17. 880.67 of the statutes is renumbered 54.878, and 54.878 (2), as renumbered, is amended to read:

54.878 (2) This section does not relieve a custodian from liability for breach of s. ~~880.665~~ 54.876.

SECTION 18. 880.675 of the statutes is renumbered 54.880.

SECTION 19. 880.68 of the statutes is renumbered 54.882, and 54.882 (2) and (3), as renumbered, are amended to read:

54.882 (2) Except for a person who is a transferor under s. ~~880.625~~ 54.860, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in s. ~~880.695~~ 54.888 (6), a custodian need not give a bond.

SECTION 20. 880.685 of the statutes is renumbered 54.884, and 54.884 (2) and (3), as renumbered, are amended to read:

54.884 (2) The propriety of, or the authority under ss. ~~880.61 to 880.72~~ 54.854 to 54.898 for, any act of the purported custodian.

(3) The validity or propriety under ss. ~~880.61 to 880.72~~ 54.854 to 54.898 of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian.

SECTION 21. 880.69 of the statutes is renumbered 54.886.

SECTION 22. 880.695 of the statutes is renumbered 54.888, and 54.888 (1), (2) and (6), as renumbered are amended to read:

54.888 (1) A person nominated under s. ~~880.62~~ 54.858 or designated under s. ~~880.65~~ 54.870 as custodian may decline to serve by delivering a valid disclaimer under s. 854.13 to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing and eligible to serve was nominated under s. ~~880.62~~ 54.858, the person who made the nomination may nominate a substitute custodian under s. ~~880.62~~ 54.858; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under s. ~~880.65~~ 54.870 (1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under s. ~~880.625~~ 54.860 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated or is removed.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor or the minor if the minor has attained the age of 14 years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under s. ~~880.625~~ 54.860 or to require the custodian to give appropriate bond.

SECTION 23. 880.70 of the statutes is renumbered 54.890, and 54.890 (1) (b), (3) and (4), as renumbered, are amended to read:

54.890 (1) (b) For a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under s. ~~880.69~~ 54.886 to which the minor or the minor's legal representative was a party.

(3) The court, in a proceeding under ss. ~~880.61 to 880.72~~ 54.854 to 54.898 or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under s. ~~880.695~~ 54.888 (6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

SECTION 24. 880.705 of the statutes is renumbered 54.892, and 54.892 (1) and (2), as renumbered, are amended to read:

54.892 (1) The minor's attainment of 21 years of age with respect to custodial property transferred under s. ~~880.625 or 880.63~~ 54.860 to 54.862;

(2) The minor's attainment of 18 years of age with respect to custodial property transferred under s. ~~880.635 or 880.64~~ 54.864 to 54.866; or

SECTION 25. 880.71 of the statutes is renumbered 54.894 and amended to read:

54.894 Applicability. Sections ~~880.61 to 880.72~~ 54.854 to 54.898 apply to a transfer within the scope of s. ~~880.615~~ 54.856 made after April 8, 1988, if:

(1) The transfer purports to have been made under ss. 880.61 to 880.71, 1985 stats.; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation “as custodian under the Uniform Gifts to Minors Act” or “as custodian under the Uniform Transfers to Minors Act” of any other state, and the application of ss. ~~880.61 to 880.72~~ 54.854 to 54.898 is necessary to validate the transfer.

SECTION 26. 880.715 of the statutes is renumbered 54.896 and amended to read:

54.896 Effect on existing custodianships. (1) Any transfer of custodial property as defined in ss. ~~880.61 to 880.72~~ 54.854 to 54.898 made before April 8, 1988, is validated notwithstanding that there was no specific authority in ss. 880.61 to 880.71, 1985 stats., for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) Sections ~~880.61 to 880.72~~ 54.854 to 54.898 apply to all transfers made before April 8, 1988, in a manner and form prescribed in ss. 880.61 to 880.71, 1985 stats., except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on April 8, 1988.

(3) Sections ~~880.61 to 880.705~~ 54.854 to 54.892 with respect to the age of a minor for whom custodial property is held under ss. ~~880.61 to 880.72~~ 54.854 to 54.898 do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 after March 23, 1972 and before April 8, 1988.

(4) To the extent that ss. ~~880.61 to 880.72~~ 54.854 to 54.898, by virtue of sub. (2), do not apply to transfers made in a manner prescribed in ss. 880.61 to 880.71, 1985 stats., or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of ss.

880.61 to 880.71, 1985 stats., does not affect those transfers, powers, duties and immunities.

SECTION 27. 880.72 of the statutes is renumbered 54.898 and amended to read:

54.898 Uniformity of application and construction. Sections ~~880.61 to 880.72~~ 54.854 to 54.898 shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of ss. ~~880.61 to 880.72~~ 54.854 to 54.898 among states enacting it.

SECTION 28. Subchapter IV (title) of chapter 880 [precedes 880.75] of the statutes is repealed.

SECTION 29. 880.75 of the statutes is renumbered 54.92.

SECTION 30. 880.76 of the statutes is renumbered 54.93, and 54.93 (1), (2) and (3), as renumbered, are amended to read:

54.93 (1) DEFINITIONS. All definitions in s. ~~880.75~~ 54.92 (1) (a) to (e) and (g) shall apply in this section, unless the context otherwise requires. "Third party" is a person other than a bank, broker, transfer agent or issuer who with respect to a security held by an incompetent or spendthrift effects a transaction otherwise than directly with the incompetent or spendthrift.

(2) SECURITY TRANSACTIONS INVOLVING INCOMPETENT OR SPENDTHRIFT; LIABILITY. A bank, broker, issuer, third party or transfer agent incurs no liability by reason of his or her treating an incompetent or spendthrift as having capacity to transfer a security, to receive or to empower others to receive dividends, interest, principal, or other payments or distributions, to vote or give consent in person or by proxy, or to make elections or exercise rights relating to the security, unless prior to acting in the transaction the bank, broker, issuer, third party or transfer agent had received written notice in the office acting in the transaction that the specific security is held

by a person who has been adjudicated an incompetent or a spendthrift or unless an individual conducting the transaction for the bank, broker, issuer, third party or transfer agent had actual knowledge that the holder of the security is a person who has been adjudicated an incompetent or a spendthrift, or actual knowledge of filing of lis pendens as provided in s. 880.215 54.47. Except as otherwise provided in this section, such a bank, broker, issuer, third party or transfer agent may assume without inquiry that the holder of a security is not an incompetent or spendthrift.

(3) ACTS NOT SUBJECT TO DISAFFIRMANCE OR AVOIDANCE. An incompetent or spendthrift, who has transferred a security, received or empowered others to receive dividends, interest, principal, or other payments or distributions, voted or given consent in person or by proxy, or made an election or exercised rights relating to the security, has no right thereafter, as against a bank, broker, issuer, third party or transfer agent to disaffirm or avoid the transaction, unless prior to acting in the transaction the bank, broker, issuer, third party or transfer agent against whom the transaction is sought to be disaffirmed or avoided had received notice in the office acting in the transaction that the specific security is held by a person who has been adjudicated an incompetent or a spendthrift or unless an individual conducting the transaction for the bank, broker, issuer, third party or transfer agent had actual knowledge that the holder is a person who has been adjudicated an incompetent or a spendthrift, or actual knowledge of filing of lis pendens as provided in s. 880.215 54.47.

SECTION 31. Subchapter V (title) of chapter 880 [precedes 880.81] of the statutes is repealed.

SECTION 32. 880.81 of the statutes is renumbered 54.950, and 54.950 (3), (4) (7) and (12), as renumbered, are amended to read:

54.950 (3) ~~“Conservator”~~ Notwithstanding s. 54.01 (3). “conservator” means a person appointed or qualified by a court by voluntary proceedings to manage the estate of an individual, or a person legally authorized to perform substantially the same functions.

(4) ~~“Court”~~ Notwithstanding s. 54.01 (4). “court” means the circuit court of this state.

(7) ~~“Guardian”~~ Notwithstanding s. 54.01 (9). “guardian” means a person appointed or qualified by a court as a guardian of the person or estate, or both, of an individual, including a limited guardian, but not a person who is only a guardian ad litem.

(12) ~~“Personal representative”~~ Notwithstanding s. 54.01 (23). “personal representative” means an executor, administrator or special administrator of a decedent’s estate, a person legally authorized to perform substantially the same functions or a successor to any of them.

SECTION 33. 880.815 of the statutes is renumbered 54.952, and 54.952 (8), as renumbered, is amended to read:

54.952 (8) ~~This subchapter does~~ Sections 54.950 to 54.988 do not displace or restrict other means of creating trusts. A trust whose terms do not conform to this subchapter may be enforceable according to its terms under other law.

SECTION 34. 880.82 of the statutes is renumbered 54.954.

SECTION 35. 880.825 of the statutes is renumbered 54.956.

SECTION 36. 880.83 of the statutes is renumbered 54.958, and 54.958 (1), as renumbered, is amended to read:

54.958 (1) Unless otherwise directed by an instrument designating a custodial trustee pursuant to s. ~~880.82~~ 54.954, a person, including a fiduciary other than a

custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a conservator or guardian of the estate may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds \$10,000, the transfer is not effective unless authorized by the court.

SECTION 37. 880.835 of the statutes is renumbered 54.960, and 54.960 (3), as renumbered, is amended to read:

54.960 (3) A custodial trustee of custodial trust property held for more than one beneficiary shall separately account to each beneficiary pursuant to ss. ~~880.84 and 880.88~~ 54.962 and 54.978 for the administration of the custodial trust.

SECTION 38. 880.84 of the statutes is renumbered 54.962.

SECTION 39. 880.845 of the statutes is renumbered 54.964, and 54.964 (2), as renumbered, is amended to read:

54.964 (2) This section does not relieve a custodial trustee from liability for a violation of s. ~~880.84~~ 54.962.

SECTION 40. 880.85 of the statutes is renumbered 54.966.

SECTION 41. 880.855 of the statutes is renumbered 54.968, and 54.968 (1) (a), as renumbered, is amended to read:

54.968 (1) (a) The custodial trust was created under s. ~~880.83~~ 54.958.

SECTION 42. 880.86 of the statutes is renumbered 54.970.

SECTION 43. 880.865 of the statutes is renumbered 54.972.

SECTION 44. 880.87 of the statutes is renumbered 54.974, and 54.974 (1) and (3), as renumbered, are amended to read:

54.974 (1) Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the

4 designation, the transferor or the transferor's legal representative. If an event giving rise to a transfer has not occurred, the substitute custodial trustee designated under s. ~~880.82~~ 54.954 becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to s. ~~880.82~~ 54.954. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

(3) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies or becomes incapacitated, the successor designated under s. ~~880.815 (7) or 880.82 54.952 (7) or 54.954~~ becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated or fails to act within 90 days after the ineligibility, resignation, death or incapacity of the custodial trustee, the beneficiary's conservator or guardian of the estate becomes successor custodial trustee. If the beneficiary does not have a conservator or a guardian of the estate, or the conservator or guardian of the estate fails to act, the resigning custodial trustee may designate a successor custodial trustee.

SECTION 45. 880.875 of the statutes is renumbered 54.976.

SECTION 46. 880.88 of the statutes is renumbered 54.978.

SECTION 47. 880.885 of the statutes is renumbered 54.980.

SECTION 48. 880.89 of the statutes is renumbered 54.982, and 54.982 (2) (b), as renumbered, is amended to read:

54.982 (2) (b) To the survivor of multiple beneficiaries if survivorship is provided for pursuant to s. ~~880.835~~ 54.960.

SECTION 49. 880.895 of the statutes is renumbered 54.984, and 54.984 (1) (intro.), as renumbered, is amended to read:

54.984 (1) (intro.) If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of s. ~~880.815~~ 54.952 are satisfied by any of the following:

SECTION 50. 880.90 of the statutes is renumbered 54.986, and 54.986 (1), as renumbered, is amended to read:

54.986 (1) ~~This subchapter applies~~ Sections 54.950 to 54.988 apply to a transfer or declaration creating a custodial trust that refers to this subchapter if, at the time of the transfer or declaration, the transferor, beneficiary or custodial trustee is a resident of or has its principal place of business in this state or custodial trust property is located in this state. The custodial trust remains subject to this subchapter despite a later change in residence or principal place of business of the transferor, beneficiary or custodial trustee, or removal of the custodial trust property from this state.

SECTION 51. 880.905 of the statutes is renumbered 54.988 and amended to read:

54.988 Uniformity of application and construction. ~~This subchapter~~ Sections 54.950 to 54.988 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this subchapter among states enacting it.

SECTION 52. Nonstatutory provisions.

(1) REVIEW OF ORDER. For an individual who is subject to an order appointing a guardian under section 880.33 (4m), 2003 stats., and to an order initially issued under section 880.33 (4r), 2003 stats., that is in effect on the effective date of this

subsection, the county department of the individual's county of residence shall, no later than 9 months after the effective date of this subsection, review the individual's status under the requirements of section 55.19 of the statutes, as created by this act.

(2) TRANSITION. Notwithstanding the treatment of section 880.33 (4m) and (4r) of the statutes by this act, all orders issued under section 880.33 (4m) and (4r), 2003 stats., in effect on the effective date of this subsection, remain in effect until modified or terminated by a court order under section 55.06 of the statutes.

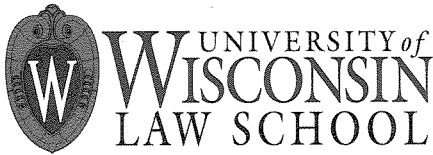
****NOTE: The Leg. Council draft, for this provision, refers to ss. 55.15 (transfer of a protectively placed individual), 55.16 (modification of order), and 55.17 (termination of an order), as created in that draft. Short of creating these provisions in this draft, I am unable to reference any relevant provision except s. 55.06. Please review.

✓ **SECTION 53. Effective date.**

ok to now
sorry, I don't understand the relevance. what do you suggest?

(1) This act takes effect on the first day of the 7th month beginning after publication.

(END)



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November 24, 2004

TO: Debora Kennedy, LRB

FROM: Betsy Abramson

RE: Guardianship Reform

Enclosed are our latest comments on the latest *DRAFT* of the Guardianship Reform bill. As you can see, there are a few areas yet to be worked out: e.g., (1) venue/residency; (2) the interplay with powers of attorney for health care and finances and the guardianship statute; (3) a few areas where you still had questions of Theresa Roetter (answers expected Monday 11/29); and (4) the psychotropic meds provision.

All that notwithstanding, hope this will give you something to work on for a bit and keep you from getting bored.

Kennedy, Debora

From: Barbara S. Hughes [bhughes@hill-law-firm.com]
Sent: Thursday, December 02, 2004 1:46 PM
To: BETSY J ABRAMSON; beckerhickey_bjb@sbcglobal.net; jjaeger@mailbag.com; tammi@execpc.com; dsybell@wisbar.org
Cc: Kennedy, Debora; Theresa L. Roetter
Subject: Guardianship Reform & child-related issues/questions

Just to let all of you know, this afternoon Theresa Roetter and I discussed the minor child-related issues, including a few good suggestions that she now raises after a closer review of the entire draft. Theresa will send an email with her responses and suggestions (the substance of which she and I have discussed--and we are in full agreement). I hope Jim got to someone in RPPT on whatever that/those issues were. I am still buried and can't do that part currently.

Barbara S. Hughes
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-----Original Message-----

From: BETSY J ABRAMSON [mailto:bjabramson@wisc.edu]
Sent: Sunday, November 21, 2004 3:40 PM
To: beckerhickey_bjb@sbcglobal.net; Barbara S. Hughes; jjaeger@mailbag.com; tammi@execpc.com; dsybell@wisbar.org
Cc: debora.kennedy@legis.state.wi.us
Subject: Guardianship Reform - and again.
Importance: High

Hey friends:

Spent the last couple days reviewing your comments from the 11/05/04 meeting I had to miss and getting the draft ready to go back to Debora. There are a few things (really, just a few) I need to ask you all about, or ask you to ask others:

p. 18 - Question about RPPT. Could any of you answer this? Or could I ask Barb H or Jim J to contact the RPPT folks and ask them?

pps. 21, 65 and 69 - could Barb H or Jim J ask Theresa Roetter to give us responses to those?

pp.96-109 - all about psychotropic meds. I'm going to ask Dianne Greenely to review this carefully.

p. 112 - ALL OF YOU - what's your thoughts on Debora's questions under 814.66(1)(n)?

Finally, Debora sent me a long e-mail on 10/19/04 about possible changes needed in the powers of attorney law (chs. 243 and 155), based on our change to the presumption in poahc (that the poahc remains in effect UNLESS court finds it in best interests to retain it if appoints a guardian) and various issues related to dpoa as well. Could I please have a little chatter on that? In case you lost that e-mail, I'll re-send it.

In the meantime, I'm going to package together what I do have and send

it all off to Debora tomorrow, even with the missing answers. Finally, may I send this draft on both to Susan Podebradsky (I'm assuming YES) and Brian Purtell (counsel for the for-profit nursing homes) who have asked to see this. I would send them HARD copies of the draft with my pencilled in changes for Debora and flagged remaining questions, all due to your 11/05/04 hard work.

Thanks all. Have a great Thanksgiving. Bets

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Kennedy, Debora

From: Betsy Abramson [abramson@mailbag.com]
Sent: Sunday, November 21, 2004 3:38 PM
To: Kennedy, Debora
Subject: Fw: Guardianship statute update: from Theresa Roetter

Oy! Bets

----- Original Message -----

From: Barbara S. Hughes
To: Betsy J. Abramson ; Betsy Abramson ; beckerhickey_bjb@sbcglobal.net ; tammi@execpc.com
Sent: Thursday, November 04, 2004 3:59 PM
Subject: FW: Guardianship statute update: from Theresa Roetter

-----Original Message-----

From: Theresa L. Roetter
Sent: Thursday, November 04, 2004 3:49 PM
To: Barbara S. Hughes; Jim A. Jaeger
Subject: Guardianship statute update

I mentioned this to Barb yesterday but wanted to follow up with an email as she requested. It has come to my attention that the definitions section of the guardianship statutes will be revised as part of the overhaul. In general that's probably a great idea, but I'm concerned (as are others in children's law circles) that a revised definition will hurt a court's ability to define what it means for someone to be the guardian of a child.

Currently, "guardian" is defined as one with "care, custody and control" of the ward. For children, this is important wording. No where else is it clear that "care, custody and control" are vested in the guardian. The form orders certainly don't say that. (We wish they would.)

This is part of the problem citizens have in enforcing guardianships. Law enforcement is never clear on what rights are transferred to the guardian.

After my presentation to the Joint Legislative Council there were many concerns expressed about the focus of the current guardianship statutes on the elderly. While I'm certain that your committee's revisions will make things better for the elderly/incompetent and disabled, many people are concerned that the revised statutes will create an even deeper divide between juvenile guardianships and elderly/disabled/incompetent cases.

As you know, Children & The Law Section only reviewed a small number of the proposed revisions. I know that we had identified one place where your committee removed the word "custody" and you were willing to put it back into the statute after we squawked.

Frankly, I think the ultimate answer is a separate juvenile guardianship statute. Joint Leg. Council is considering that option but I fear your statutory revision will get enacted before that happens and children might lose out.

- Theresa

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11/22/2004